

# Exhibit 2

# Declaration of Shannon Wheatman

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Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL"  
MARKETING, SALES PRACTICES AND  
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

This Documents Relates to:

**DECLARATION OF SHANNON R.  
WHEATMAN, PH.D. ON ADEQUACY  
OF THE CLASS NOTICE PROGRAM**

ALL CONSUMER AND RESELLER  
ACTIONS

Hearing: July 26, 2016  
Time: 8:00 a.m.  
Courtroom: 6, 17th floor

The Honorable Charles R. Breyer

I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

1. I am president of Kinsella Media, LLC ("KM"), an advertising and legal notification firm in Washington, D.C. specializing in the design and implementation of notification programs to reach unidentified putative class members, primarily in consumer and antitrust class actions, and claimants in bankruptcy and mass tort litigation. My business address is 2001 Pennsylvania Avenue NW, Suite 300, Washington, D.C. 20006. My telephone number is (202) 686-4111.

2. KM was retained to design and implement the Notice Program in this litigation.

3. This declaration will describe my experience in designing and implementing notices and notice plans, as well as my credentials to opine on the overall adequacy of the notice effort. It will also describe the Notices and the Class Notice Program proposed here for *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, including how they were developed and why I believe they will be effective.

4. This declaration is based upon my personal knowledge and upon information provided by Class Counsel, Defense Counsel, and my associates and staff. The information is of a type reasonably relied upon in the fields of advertising, media, and communications.

### **RELEVANT EXPERIENCE**

5. KM has developed and directed some of the largest and most complex national notification programs in the country. The scope of the firm's work includes notification programs in bankruptcy, antitrust, consumer fraud, mass tort, and product liability litigation. Specific cases have involved, among others, asbestos, breast implants, home siding and roofing products, infant formula, pharmaceuticals, polybutylene plumbing, tobacco, and Holocaust claims. The firm has developed or consulted on over 900 notification programs and has placed over \$380 million in media notice.

6. I have served as a qualified class action notice expert in many major class actions. State and federal courts have accepted my analyses and expert testimony on whether information is effectively communicated to people. My curriculum vitae is attached as **Attachment A**.

7. I have testified in court as an expert in *State v. Farmers Group Inc.*, No. D-1-GV-02-002501 (D. Ct. Tex., Travis County); *Scharfstein v. BP West Coast Products, LLC*, No. 1112-17046 (Cir. Ct. Ore.); *Spillman v. RPM Pizza, Inc.*, No. 10-349 (M.D. La.); *PRC Holdings, LLC v. East Resources, Inc.*, No. 06-C-81 (Cir. Ct. W. Va.); *Guidry v. American Public Life Ins. Co.*, No. 2008-3465 (14th Jud. Dist. Ct., Calcasieu Parish); *Webb v. Liberty Mutual Ins. Co.*, No. CV-2007-418-3 (Cir. Ct. Ark); and *Beasley v. The Reliable Life Insurance Co.*, No. CV-2005-58-1 (Cir. Ct. Ark). I have been deposed as an expert in *Hale v. CNX Gas Company, LLC*, No. 10-CV-59 (W.D. Va.) and *Thomas v. A. Wilbert Sons, LLC*, No. 55,127 (18th Jud. Dist. Ct., Iberville Parish).

8. I have been involved in some of the largest and most complex national notification programs in the country, including: *In re: Transpacific Passenger Air Transportation Antitrust Litigation*, MDL No. 1913 (N.D. Cal.) (involving millions of international airline passengers); *In re Dynamic Random Memory Antitrust Litig.*, MDL No. 1486 (N.D. Cal.) (involving tens of millions of consumers); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.) (involving millions of indirect purchasers); *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La.); *Kramer v. B2Mobile, LLC*, No. 10-cv-02722 (N.D. Cal.) (text messaging case involving tens of millions of consumers); *In re Enfamil LIPIL Mkt'g & Sales Pract. Litig.*, No. 11-MD-02222 (S.D. Fla.) (consumer fraud settlement involving millions of infant formula purchasers); *Fogel v. Farmers Group, Inc.*, No. BC300142 (Cal. Super. Ct., LA County) (\$455 million settlement involving tens of millions of insureds); *In re Katrina Canal Breaches Consolidated Litig.*, No. 05-4182 (E.D. La.) (settlement obtained for Hurricane Katrina and Rita survivors); *Lockwood v. Certegy Check Services, Inc.*, No. 8:07-CV-1434 (M.D. Fla.) (data theft settlement involving over 37 million consumers); *Grays Harbor Adventist Christian School v. Carrier Corp.*, No. 05-05437 (W.D. Wash.) (defective product settlement involving high efficiency furnaces); and many others.

9. Courts have admitted my expert testimony on quantitative and qualitative evaluations of the effectiveness of notice programs, and several courts have commented favorably, on the record, regarding the effectiveness of notice plans I have done. Selected judicial comments are included in the attached curriculum vitae.

10. My qualifications include expertise in the form and content of notice. For example, while serving with the Federal Judicial Center ("FJC"), I played an integral part in the development of the illustrative, "model" forms of notice designed to satisfy the plain language requirements of Federal Rule of Civil Procedure 23(c)(2). This research formed the basis for my doctoral dissertation, *The Effects of Plain Language Drafting on Layperson's Comprehension of Class Action Notices* (2001) (Ph.D. dissertation, University of Georgia). To assist judges and attorneys, both in state and federal courts, the FJC posted the notices at [www.fjc.gov](http://www.fjc.gov).

11. I have authored and co-authored articles on notice and due process. I believe notice and due process depend upon clear communication with the people affected. *See, e.g.,* Shannon R. Wheatman & Katherine M. Kinsella, *International Class Action Notice*, in WORLD CLASS ACTION: A GUIDE TO GROUP AND REPRESENTATIVE CLASS ACTIONS AROUND THE GLOBE 673-686 (Paul Karlsgodt ed., 2012); Katherine Kinsella & Shannon Wheatman, *Class Notice and Claims Administration*, in PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED STATES: A HANDBOOK 338-348 (Albert A. Foer & Randy M. Stutz eds., 2012); Shannon R. Wheatman & Terri R. LeClercq, *Majority of Class Action Publication Notices Fail to Satisfy Rule 23 Requirements*, 30 REV. LITIG. 53 (2011); Katherine Kinsella & Shannon R. Wheatman, *Class Notice and Claims Administration*, in THE INTERNATIONAL PRIVATE ENFORCEMENT OF COMPETITION LAW 264–274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010); Todd B. Hilsee, Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The ethics behind due process in class action notice is more than just plain language: A desire to actually inform*, 18 GEO. J. LEGAL ETHICS 1359 (2005); Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The “Desire-to-Inform” Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006).

12. The proposed Class Notice Program was jointly developed with Katherine Kinsella, the founder and former president of KM, and a court-recognized notice expert with 22 years of experience in the design and execution of notice programs in class actions and bankruptcies. Her curriculum vitae is attached as **Attachment B**.

### **NOTICE PROGRAM OVERVIEW**

13. The proposed Class Notice Program was designed to reach the greatest practicable number of Class Members and ensure that they will be exposed to, see, review, and understand the Notice.

14. Although each case is unique, the methods and tools used in developing the Class Notice Program for the Class Settlement have been employed in many other court-approved notice programs.

15. I have been involved in drafting the various forms of Notice described below. Each form is noticeable and written in plain language.

16. In developing the Class Notice Program, KM determined that the most practicable way to reach Class Members is through the use of direct notice, paid and earned media, and an informational website.

17. As detailed below, in my opinion, the Class Notice Program represents the best notice practicable under the circumstances.

### **NOTICE PROGRAM SUMMARY**

#### **Direct Mail Notice**

18. Based on information provided by counsel, a comprehensive list of potential Class Members can be created. It is, therefore, reasonable to implement an individual direct mail notification effort to reach Class Members using this list.

19. Direct mail notice consisting of a personalized cover letter and Detailed (or Long Form) Notice will be the principal method of reaching Class Members and providing them with opportunities to see, read, and understand their rights, and act if they so choose. This Direct Mail Notice will be distributed via first-class mail to:

- a. All readily identifiable Class Members.
- b. Anyone who calls the toll-free information line or writes the Notice Administrator to request the Long Form Notice.

20. The Long Form Notice will also be available on the Settlement Website as a PDF file.

21. Prior to mailing, all addresses on the Class Member list will be checked against the National Change of Address ("NCOA") database, which is maintained by the United States Postal Service ("USPS") and contains records of all permanent changes of addresses for businesses and individuals received by the USPS for the last four years.

22. Direct Mail Notices that are returned as non-deliverable will be traced and re-mailed as appropriate. In the case of Notices returned as non-deliverable with an expired automatic forwarding order, the Notices will be re-mailed to any address indicated by the USPS

1 in the expired automatic forwarding order. Notices returned as non-deliverable, but for which a  
 2 new address is not indicated by the USPS, will be further searched through LexisNexis or a  
 3 similar vendor to obtain a more current address. LexisNexis uses a variety of third-party sources  
 4 to compare latest addresses for U.S. businesses and returns updated addresses for them. If any  
 5 such address is found, the Notice will be re-mailed.

### 6 **Paid Media**

7 23. To supplement the Direct Mail Notice, KM recommends a paid media program  
 8 that includes national newspapers, local newspapers, consumer magazines, trade magazines, and  
 9 digital media.

10 24. The Short Form Notice will appear as a two-color advertisement in the following  
 11 national newspapers:

- 12 a. In the Sunday edition of *The New York Times*, which has an estimated  
 13 circulation of 2,579,166.
- 14 b. In the daily edition of *The Wall Street Journal*, which has an estimated  
 15 circulation of 1,321,827.
- 16 c. In the daily edition of *USA Today*, which has an estimated circulation of  
 17 1,100,000.

18 25. The Short Form Notice will also appear as a two-color advertisement in local daily  
 19 newspapers as follows:

- 20 a. In both the Sunday and daily editions of 19 newspapers that cover markets  
 21 with 5,000 or more Eligible Vehicles, and
- 22 b. In the Sunday edition of 26 newspapers that cover markets with 2,000 to  
 23 4,999 Eligible Vehicles.

24 26. A complete list of the newspapers and circulation information is attached as  
 25 **Attachment C.**

26 27. The Class Notice Program includes digital advertising to provide Class Members  
 27 with additional notice opportunities beyond the print placements. Internet advertising delivers an  
 28

1 immediate message and allows the viewer of an advertisement to instantly click through to a  
2 website for further information.

3 28. Targeted Internet advertising may include:

4 a. Third-Party Targeting: Banner advertisements will be delivered to websites  
5 using IHS Automotive (Polk)<sup>1</sup> data to Eligible Owners and Eligible  
6 Lessees.

7 29. To target individuals who are researching or have an interest in automobiles,  
8 banner advertisements will be placed on automotive websites that provide detailed vehicle  
9 information, such as pricing and reviews, to consumers. Banner advertisements will appear, on a  
10 rotating basis, on the National Automobile Dealers Association ([www.nada.org](http://www.nada.org)), *Hemmings*  
11 *Motor News* ([www.hemmings.com](http://www.hemmings.com)), and *Kelley Blue Book* ([www.kbb.com](http://www.kbb.com)) websites. Banner ads  
12 and high impact units<sup>2</sup> will also be placed on websites associated with the following consumer  
13 magazines: *Automobile*, *Car and Driver*, *Motor Trend*, and *Road & Track*.

14 30. To specifically reach fleet owners, banner advertisements will appear on the  
15 National Association of Fleet Administrators website ([www.nafa.org](http://www.nafa.org)). Banner ads and high  
16 impact units will also be placed on websites associated with the following the following trade  
17 publications: *Automotive Fleet*, *Automotive News*, *Auto Rental News*, *FLEETSolutions*.

18 31. Social Media advertising will include targeted advertising on Facebook, Instagram,  
19 and Twitter.

20 32. KM will place ads on the Google Display Network to reach potential Class  
21 Members. The Google Display Network provides banner and/or video ad placement on a variety  
22 of websites, blogs, and other niche sites in Google's network to reach the broad and diverse  
23 interests of potential Class Members.

24 33. KM will implement sponsored keywords and phrases with all major search  
25 engines, including: Google AdWords, Bing Microsoft Advertising, and their search partners.

26 <sup>1</sup> IHS Automotive (Polk) collects and analyzes data related to vehicle registration and title  
27 information, new vehicle transactions from major auto manufacturers, and vehicle financing data.

28 <sup>2</sup> High Impact Units are banner ad units that drive higher response rates than standard display ads  
because of their larger size and interactive features.



1 When a user searches for one of the specified search terms or phrases, sponsored links will appear  
2 on the results page.

3 **Earned Media**

4 34. An earned media program will also be implemented to amplify the paid media and  
5 to provide additional notice to Class Members. A multimedia news release (also known as a  
6 “campaign hero microsite”) will be distributed on PR Newswire’s US1 National Circuit, reaching  
7 approximately 5,000 media outlets and 5,400 websites. The release will blend text, audio, video,  
8 photos, related documents, and social media.

9 **VW Class Updates**

10 35. Updates will be provided to all identifiable Eligible Owners and Eligible Lessees,  
11 by mail or email, when and if an emissions modification proposed by Volkswagen is approved by  
12 EPA and CARB. VW Class Updates will also be sent to affiliated Volkswagen dealerships. The  
13 availability of any Approved Emissions Modification will also be disclosed on the Settlement  
14 Website.

15 36. When and if the proposed emissions modification(s) are rejected, or no emissions  
16 modification is proposed, a VW Class Update will be mailed or emailed to all identifiable  
17 Eligible Owners and Eligible Lessees to inform them.

18 **Other**

19 37. Volkswagen will establish a website at [www.VWCourtSettlement.com](http://www.VWCourtSettlement.com) to enable  
20 Class Members to get information on the Class Settlement, including the Long Form Notice and  
21 the Settlement Agreement.

22 38. Volkswagen will establish a toll-free phone number to allow Class Members to  
23 call and request that a Long Form Notice be mailed to them or listen to answers to frequently  
24 asked questions.

25 39. The Notice Administrator will establish a post office box to allow Class Members  
26 to contact Class Counsel by mail with any specific requests or questions.

**NOTICE FORM AND CONTENT**

40. The Notices effectively communicate the require information about the Class Settlement.

41. The Long Form Notice provides substantial information, including background on the issues in the case and all specific instructions Class Members need to follow to properly exercise their rights. No important or required information is missing or omitted. It is designed to encourage readership and understanding, in a well-organized and reader-friendly format.

42. The Short Form Notice is designed to capture Class Members' attention with concise, plain language. It directs readers to the case website or toll-free number for more information.

**CONCLUSION**

43. It is my opinion that the Class Notice Program and content of the Notices are adequate and reasonable under the circumstances and provide the best notice practicable. The Class Notice Program is consistent with the standards employed by KM in notification programs designed to reach class members. The Notice Program, as designed, is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. this 27th day of June 2016.



Shannon R. Wheatman, Ph.D.